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09/758,738	01/10/2001	Larry Moriarty	10420-1080	9025

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EXAMINER
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PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/758,738

Applicant(s)

MORIARTY, LARRY

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-16,18-21 and 23-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6 and 18 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7-16,23 and 25 is/are rejected.
- 7) ☒ Claim(s) 24 and 26 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment (paper no. 18) dated 9-18-03 and this action is non-final.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2, 4-5 and 7-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to how the telescopic connector means provides a weight measurement in that the scale is the device, which performs this function.

Claims 2, 4-5 and 8-16 depend from rejected claims 1 and 7 and include all of the limitations of claims 1 and 7 thereby rendering these dependent claims indefinite.

### ***Claim Rejections - 35 USC § 103***

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3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4-5, 7-8, 10, 19-21, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,037,351 to van den Nieuwelaar et al. in view of U.S. Patent No. 2,456,224 to Sullivan.

Referring to claims 1, 7, 19-21, 23 and 25, van den Nieuwelaar et al. discloses a shackle for transporting a poultry carcass suspended by its legs along a processing path and over a weighing scale track for weighing the carcass, the shackle assembly comprising a trolley support – 6 and 25, a trolley – at 19, 24a, 24b mounted to the trolley support – 6 and 25 for engaging the weighing scale track – 10, a bird carrier – 4 for suspending the poultry carcass – 32 from the trolley support – 6, 15 and 25, and a turning means – 21 and 29 mounted to the trolley support – 6, 15, and 25 and operatively connected to the bird carrier – 4 for rotating the trolley support – 15 and the bird carrier – 4 in unison in response to engagement by a cam along the processing path – see figures 1-8 and column 5 lines 13-54. van den Nieuwelaar et al. further discloses the bird carrier can be raised or lowered as seen in figure 1 and further discloses a weight measurement is performed consisting essentially of the weight of the bird carrier, the trolley and the carcass in response to the shackle assembly engaging the weighing scale – see for example figure 1. Van Den Nieuwelaar et al. does not disclose a telescopic connector means for telescopically connecting the trolley support to the bird carrier and suspending the bird carrier from the trolley support comprising a tubular support with a rod received therein nor with regards specifically to

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claims 23 and 25, the relation of the wheels, upper rod and lower rod. Sullivan does disclose a telescopic connector means – (at 23) for telescopically connecting the trolley support – (at 12) to the bird carrier – (at 31) and suspending the bird carrier from the trolley support, comprising a tubular support – at 11, 19 with a rod – at 27 received therein, and the wheels – at 22, in relation to the upper rod – at 19 and the lower rod – at 27 – see figures 1-6. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. and add the telescopic connector means of Sullivan, so as to make the device more compact and efficient in that the poultry carcass can be raised and lowered as desired to accommodate various processing functions thus allowing the same trolley track to be used for more than one processing application, thus reducing the components needed for the device and making the operation quicker.

Referring to claim 2 Van Den Nieuwelaar et al. as modified by Sullivan further discloses the telescopic connector means includes an elongated slot – the inside of 11 and 19, for receiving the trolley – the portion of the trolley at 18 – see figures 1-3 of Sullivan.

Referring to claim 4, Van Den Nieuwelaar et al. as modified by Sullivan further discloses the telescopic connector means – (at 23) further including the tubular support – 19 and the rod – 20 and 27 having aligned openings – 23 that pass transversely through the support and rod, and wherein the trolley includes a wheel axle – 21 extending through the aligned openings – 23 for engaging the tubular support – 19 and the rod – 20 and 27, at least one of the aligned openings – 23 also being of larger breadth than a cross-sectional breadth of the wheel axle for permitting telescopic movement between the tubular support – 19 and the rod – 20 and 27 in a substantially non-rotating relationship – see figures 1-3. Therefore it would have been obvious to one of

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ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and add the tubular support and rod with aligned openings of Sullivan, so as to make the device as compact and lightweight as possible since the tubular support, rod and wheel axle are all connected through the same openings.

Referring to claim 5, Van Den Nieuwelaar et al. as modified by Sullivan further discloses the larger breadth opening – 23 is arranged in the tubular support – 19 – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and further add the larger breadth opening in the tubular support of Sullivan, so as to make the device easier to manufacture in that the wheel axle can easily fit into the tubular support since the opening is much larger than the axle and less work to assemble the device is required since the fit between the wheel axle and the tubular support is not tight.

Referring to claim 8, Van Den Nieuwelaar et al. as modified by Sullivan further discloses the connector means comprises the trolley support – (at 23) and the bird carrier – (at 20) having overlapping ends with aligned openings extending therethrough, and the trolley having a wheel axle extending through the aligned openings – see for example figure 2 of Sullivan. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and further add the trolley support and bird carrier having overlapping ends with aligned openings of Sullivan so as to make the device as compact and lightweight as possible since the components are connected directly to each other.

Referring to claim 10, Van Den Nieuwelaar et al. as modified by Sullivan further disclose the telescopic connector means – (at 23) includes one of the trolley support – (at 12) and the bird

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carrier – (at 31) having a tubular support rod – 19 defining a central passage and the other of the trolley support – and the bird carrier having a rod – 20 and 27 extending into the central passage – see figures 1-6 of Sullivan. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and further add the telescopic connector means including a tubular support rod and a rod of Sullivan, so as to make the device more compact and efficient in that the poultry carcass can be raised and lowered as desired to accommodate various processing functions thus allowing the same trolley track to be used for more than one processing application, thus reducing the components needed for the device and making the operation quicker.

Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Den Nieuwelaar et al. in view of Sullivan as applied to claim 8 above, and further in view of U.S. Patent No. 3,781,946 to Altenpohl. Van Den Nieuwelaar et al. as modified by Sullivan does not disclose the overlapping ends are adapted to move axially with respect to each other in response to the trolley passing over the weighing scale. Altenpohl does disclose the overlapping ends are adapted to move axially with respect to each other in response to the trolley – 20 passing over the weighing scale – see figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and further add the overlapping ends adapted to move axially with respect to each other of Altenpohl, so as to make the device more flexible in that the bird carrier and trolley support can move in different directions relative to one another thus giving the device more possible positions of the poultry carcass as it is being processed.

Claims 11-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Den Nieuwelaar et al. as modified by Sullivan as applied to claim 8 above, and further in view of Altenpohl.

Referring to claim 11, Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl further discloses a top end of the rod – 28 is fixed to the trolley support – 18,24 and a top end of the tubular support – 14 slidably receives the rod – 28 – see figures 1-3 of Altenpohl. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl and further add the rod fixed to the trolley support and the tubular support slidably receiving the rod of Altenpohl so as to make the device stronger and more flexible in that the rod fixed to the trolley support makes that connection stronger and the tubular support slidably receiving the rod allows the rod to move in to different configurations with respect to the tubular support thus making the device more flexible.

Referring to claim 12, Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl further discloses the bird carrier – (at 12) is fixed to a bottom end of the tubular support – 14 – see for example figures 1-3 of Altenpohl. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl and further add the bird carrier fixed to a bottom end of the tubular support of Altenpohl, so as to make the device stronger and more durable in that the bird carrier is securely held by the tubular support.

Referring to claim 13, Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl further discloses a top end of the tubular support – 19 is fixed to the trolley support – (at 12) and a



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bottom end of the tubular support – 19 slidably receives the rod – 20,27 – see figures 1-3 of Sullivan. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl and further add the tubular support fixed to the trolley support and the bottom end of the tubular support receiving the rod of Sullivan, so as to make the device stronger and more flexible in that the tubular support and trolley support will be strong and able to handle larger loads since they are fixedly connected and the tubular support can move with respect to the rod thus allowing the device to be placed into many different configurations depending on the process that is to be performed on the carcass thus making the device more flexible.

Referring to claim 14, Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl further discloses the bird carrier – (at 31) is fixed to a bottom end of the rod – 27– see figures 1-3 of Sullivan. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl and further add the bird carrier fixed to the bottom end of the rod of Sullivan, so as to make the device stronger in that the bird carrier holds the carcass which can be heavy and with the bird carrier fixed to the rod the connection between the rod and bird carrier is strong and thus can handle heavy poultry carcasses.

Referring to claim 15, Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl further discloses one of the aligned openings – 23 is a slotted opening – see for example figure 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. in view of Sullivan and Altenpohl and add the slotted

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aligned opening of Sullivan, so as to make device adjustable in that the wheel axle can move along the slotted opening so as to adjust its height thus making the device easier to operate.

Referring to claim 16, Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl does not disclose the slotted opening is formed in the rod. However it would have been obvious to one of ordinary skill in the art to have the slotted opening in the rod since the rod is disposed inside the tubular support with the tubular support providing protection to the rod so that no outside contaminants can enter the slotted opening and cause harm to the device. Therefore it would have been obvious to one of ordinary skill in the art to take the shackle assembly of Van Den Nieuwelaar et al. as modified by Sullivan and Altenpohl and add the slotted opening in the rod, so as to make the device adjustable in that the wheel axle can move along the slotted opening so as to adjust its height thus making the device easier to operate.

***Allowable Subject Matter***

4. Claims 6 and 18 are allowed.

Claims 24 and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

5. Regarding claims 1-2 and 4-5, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant's arguments with respect to claims 7-16 and 19-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patent is cited to further show the state of the art with respect to carcass weighing devices in general:

U.S. Pat. No. 4,317,258 to Altenpohl et al. – shows shackle assembly for weighing a carcass

7. Any inquiry concerning this communication from the examiner should be directed to David Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on Monday-Friday from 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574.

  
PETER POON  
SUPERVISOR  
TECHNICAL CENTER